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CAD BULLETIN NO. 87-11

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TO: ALL UTILITIES SUBJECT TO CHAPTER 81, DISCONNECTION AND DEPOSIT
REGULATIONS FOR RESIDENTIAL UTILITY SERVICE

FROM: BARBARA R. ALEXANDER, DIRECTOR, CAD

BA

RE: DISCONNECTION FOR FAILURE TO PAY METER REPAIR CHARGES

The Consumer Assistance Division has had several complaints filed recently concerning whether a water utility may bill and seek disconnection for failure to pay frozen meter repair charges. Most water utilities bill separately for such charges, but maintain the right to seek disconnection for failure to pay. Other utilities include repair charges on the customer's bill for water service and include overdue repair charges on a disconnection notice. In almost every case, water utilities treat frozen meter repairs as "jobbing", i.e., not governed by regulated or tariffed charges.

There are three factors to be considered in determining whether a water utility should be able to disconnect for failure to pay frozen meter repair charges:

First, a utility may not disconnect current service for failure to pay unregulated or untariffed charges. Title 35-A M.R.S.A. Section 304 requires a public utility to file with the Commission "all rates, tolls and charges which the utility has established and which are in force at the time for any service performed by it within the State, or for any service in connection with or performed by any public utility controlled or operated by it or in conjunction with it." 35-A M.R.S.A. Section 309 requires a public utility to adhere to the rate schedules approved by the Commission; a utility may not "... demand, collect or receive any rate, toll or charge not specified in the schedules." A hallmark the regulatory scheme established by the Maine Legislature for monopoly utility service is the regulation of its rate and charges by the PUC. At a minimum, customers should not be subject to disconnection of essential utility services for nonpayment of a charge which has not been submitted to the Commission pursuant to Title 35-A.

Second, Chapter 62, Section 2(B) of the Commission's Rules allows a water utility to seek payment in advance when the utility "agrees to do work outside the scope of regulated utility service for a customer at the customer's expense." Section 3(F) obligates the

water utility to repair and replace meters due to ordinary wear and tear, but allows the utility to charge the customer for repairs caused by "freezing, hot water, or by other causes within the control of the customer ..." Since most water utilities have treated these frozen meters repairs as "jobbing", Chapter 62 clearly allows such unregulated charges to be collected in advance so as to avoid granting credit for a charge which cannot be collected subject to disconnection. If a water utility treats such repairs as "jobbing", the water utility has weaker grounds to insist that the customer may not employ its own repair person. If a utility does not submit its charges to regulation, then it must submit them to the protections of the competitive market place.

Third, Chapter 81 of the Commission's Rules also addresses this issue. Section 3(A)(2) prohibits disconnection for directory advertising, merchandise and appliances "not essential to the providing of the monopoly utility service." The intent of this provision is that a customer should not be subject to disconnection for an ongoing service for failure to pay for a product or service provided by the utility that is not basic to the provision of monopoly utility service. This provision, at the very least, prohibits disconnection for unregulated or nontariffed services.

Whether or not a properly tariffed repair charge can be the subject of disconnection is not a settled matter. The proper definition of basic versus non-basic utility services is currently being considered in the proposed revisions to Chapter 81 (Docket No. 87-129). The purpose of this distinction is to identify which services, if not paid, may be subject to disconnection and which may not. It is arguable that nonrecurring charges, such as line extensions costs and meter repairs, should not be subject to disconnection. However, no definitive guidance can be given until the Chapter 81 rulemaking is completed.

Until the pending rulemaking proceeding resolves this issue, the Consumer Assistance Division offers the following interim advice:

(1) Untariffed meter repair charges cannot be included in a customer's regular bill for metered utility service nor can the failure to pay those charges subject to the customer to disconnection or the threat of disconnection.

(2) If the charges are not tariffed, utilities can seek payment in advance equal to the estimated cost of the repairs or issue a separate bill. Failure to pay the repair charges leaves the utility with the same rights as any other unregulated creditor (e.g., dunning notices, referral to collection agency, suit in Small Claims Court).

(3) If meter repair charges are tariffed, a water utility may include the charges in a separate bill or a customer's regular bill. The utility may seek disconnection for failure to pay these regulated charges on the grounds that the repair of the meter is basic to the provision of metered water service.

However, until the resolution of the Chapter 81 rulemaking, the CAD will decide customer appeals on a case-by-case basis.

There are two considerations to be taken into account concerning the utility's right to seek disconnection for tariffed repair charges. First, this discussion assumes that the meter is owned by the utility and that the utility has the obligation to maintain and repair the meter except for instances of customer fault enumerated in Chapter 62, Section 3(F). There is some question that this assumption is proper.

Chapter 62 of the Commission's Rules assumes that the utility owns the meter. Section 1(G) defines the "service pipe" to exclude the meter and Section 3(C) states that the cost of the meter and installation must be borne by the utility and that the customer can request a change in the location of the meter, but that "the change may be made only by an agent of the company." However, 35-A M.R.S.A. Section 6101(2) defines "service line" to include the meter. Section 6106 provides that a municipal or quasi-municipal water utility may elect not to invest in a water main extension or service line. If the customer is required to pay for the meter as well as the service line, whether or not there is a main extension, it raises the question of who owns and is responsible for repair of the meter. It may be advisable for water utilities who wish to bill and disconnect for failure to pay meter repair charges to seek clarification of this conflict by the Legislature.

In addition, disconnection for failure to pay a tariffed repair charge is also dependent on the utility's compliance with the requirements of Chapter 62. The utility has a duty to inform the customer of his or her obligation to provide a suitable location for the meter vault. This is particularly true at the time that the utility repairs or replaces a frozen meter. If the damage was due to a unique event (broken window), repair or replacement with no change in the meter's location may be appropriate. If, however, the damage was due to a condition likely to be repeated (insufficient insulation; customer moved the meter location without notification to the utility), the utility is under an obligation to require the customer to provide the appropriate "warm, dry, and accessible location." A utility may refuse future service for failure to comply with this condition. A utility that does not exercise prudence in preventing future frozen meter repairs should not be allowed to shift the repair burden to the customer without at least giving written notice to the customer of the need to correct the meter's location.

Thank you for your attention to this issue.